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IN THE
UNITED STATES
CIRCUIT COURT
OF APPEALS
FOR THE
NINTH CIRCUIT

JULIA MOSHER COLLINS,
WILLIAM B. LOUNT and
HATTIE L. MOSHER,
Appellants,

vs.

CITY OF PHOENIX, a mu-
nicipal corporation,
Appellee.

No. 3525

SCHEDULE OF
DEFENDANT'S EXHIBITS AND TESTI-
MONY ARRANGED BY
REFERENCE TO SUBJECTS

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Clerk of the Supreme Court of the State of Arizona.

United States Circuit Court of Appeals for Ninth Circuit



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LAND IN DISPUTE.

The land in dispute is a strip 33 feet in width and 704 feet in length constituting a part of Van Buren Street in the City of Phoenix. Van Buren Street runs east and west and is 66 feet in width. The center of the street follows the section line between Sections 8 and 5, Township 1 North, Range 3

East, 33 feet being on the north and 33 feet on the south of the section line.

Transcript Page 4

The strip in question is claimed by plaintiffs to be their private property and a part and parcel of what is known as the Lount Tract. This tract is included within what is known as Churchill's Addition to the City of Phoenix.

Transcript Page 5

LAND IN DISPUTE ORIGINALLY PART COUNTY HIGHWAY.

On March 18th, 1871, section lines within County of Maricopa declared highways by order of Board of Supervisors. The order specifically declared section line between Sections 8 and 5, including land in dispute, county road.

Transcript Page 64

Van Buren Street for full width actually used by public as highway as early as 1887.

Testimony of H. R. Patrick, Surveyor,

Transcript Pages 65 to 67

MAPS AND PLATS.

Lount Tract platted in 1888 as part of Churchill Addition to the City of Phoenix, showing Van Buren Street for full width.

Defendant's Exhibit A.

Transcript Page 27

In 1898 City of Phoenix filed with County Recorder of Maricopa County official plat Churchill Addition showing Lount Tract divided into blocks and Van Buren Street for full width.

*Defendant's Exhibit C,
Transcript Page 31*

ORDINANCES SHOWING DEDICATION.

Ordinance passed September 7th, 1898 by Common Council City of Phoenix, adopting defendant's Exhibit C as the official plat of Churchill's Addition, including Lount Tract; also declaring dedicated to public use all streets shown upon said plat and forbidding any encroachment thereon.

*Defendant's Exhibit 2
Transcript Page 56*

Ordinance passed March 4th, 1895, fixing the grade of Van Buren Street.

Transcript Page 60

Ordinance passed March 22d, 1909, giving block numbers to the Lount Tract in Churchill's Addition.

Transcript Page 61

DEEDS AND OTHER INSTRUMENTS SHOWING DEDICATION OF LAND AS PART OF VAN BUREN STREET.

Deed dated September 21st, 1881, describ-

ing Lount Tract as on north side of Van Buren Street.

*Plaintiff's Exhibit A,
Transcript Page 78*

Various deeds and other instruments signed by plaintiffs in which Van Buren Street is described as constituting the south line of the Lount property, and describing the lots and blocks of Lount Tract by reference to official plat of Churchill's Addition adopted in 1898.

*Defendant's Exhibits 4 to 18, inclusive,
Transcript Pages 80 to 92, inclusive*

Exhibit 8 supra describes the north line of Van Buren Street as being 33 feet north of the section line between Sections 5 and 8.

*Transcript Page 85
See also testimony Otto Kitchen, Surveyor,
Transcript Page 73*

Decree of distribution in the matter of the estate of Julia A. Lount, deceased, distributing Lount Tract to Hattie L. Mosher and William B. Lount, November 9th, 1908, property described as Block 1 and Block 2 of Churchill's Addition City of Phoenix.

*Defendant's Exhibit 7
Transcript Page 82*

DEDICATION AS SHOWN BY ADMIS- SION OF PARTIES.

Testimony of Homer A. Turney, Surveyor, showing admission by William B. Lount, one of the plaintiffs, of dedication of Van Buren Street as shown on map of Churchill's Addition.

Transcript Pages 68 to 70

Petition and protest to City of Phoenix asking that paving of Van Buren Street be deferred until a certain canal could be paved where it crosses and runs into Van Buren Street.

Transcript Page 78

DEDICATION SHOWN BY USER AND BY TAX ASSESSMENTS.

Testimony of V. A. Thompson, City Manager, that Van Buren Street has been improved and used as a street for full width by the City without protest from anyone as long as he has known the same, which covers a period of seventeen years.

Transcript Page 72

Testimony of George Kirkland showing assessment of Lount property by lots and blocks according to official survey of Churchill's Addition, and that no assessments have been made upon any part of Van Buren Street claimed by plaintiffs.

Transcript Pages 70 and 71

ARIZONA STATUTES RELATING TO
OFFICIAL PLATS OF ADDITIONS TO
TOWNS AND CITIES AND THE EF-
FECT OF SUCH MAPS UPON DEDICA-
TION OF STREETS.

“1891. Whenever any town, organized hereunder, or an addition to any such town, shall be laid out, the proprietors of the town or addition laid out, shall cause to be made an accurate plat or map thereof, setting forth:

First. All streets, alleys, avenues and highways and the width thereof.

Second. All parks, squares and all other grounds reserved for other uses, with the boundaries and dimensions thereof.

Third. All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of such lots.

“1892. Such maps shall be acknowledged by the proprietor or some person for him, duly authorized thereunto by deed, before some officer authorized to take acknowledgement of deeds, and a copy thereof, so acknowledged, shall be filed in the office of the county recorder and also in the office of the clerk of such town or city.

“1893. The county recorder of the county shall record all such plats in a book to be kept by him for that purpose, and, when necessary, may reduce the scale of any such plat, and upon each record in the said book, shall endorse his certificate that the same is truly recorded from the original plat filed in his office. Every such original plat shall be preserved by the county recorder of the county, and the clerk of the city or town, among the records of their offices respectively.

“1894. All such original plats, or the records thereof, or copies therefrom, certified by the recorder having custody thereof, shall be evidence in all courts and places.

1895. Upon the filing of any such map or plat, the fee of all streets, alleys, avenues, highways, parks and other parcels of ground reserved therein to the use of the public, shall vest in such town, if incorporated, in trust, for the uses therein named and expressed; or if such town be not incorporated, then in the county until such town shall become incorporated, for the like uses.

“1896. All additions to any town, organized hereunder, shall be surveyed and platted, and a map thereof be submitted to the common council; and such map shall not be filed and recorded, as pro-

vided in this chapter, until the same shall have been approved by said common council."

Revised Statutes of Arizona 1913, Title 7, Chapter II, Paragraphs 1891 to 1896, inclusive.

Act of April 12, 1893.